

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:
Pacific Aerospace Site
Campbell, Santa Clara County, California

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIONS

Pacific Aerospace Services, Inc.
and John C. Waxler,

U.S. EPA Region IX
CERCLA Docket No. 9-2006-15

Respondents

Proceeding Under Sections 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9606(a).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority was further redelegated by the Regional Administrator of EPA Region 9 to the Response Planning & Assessment Branch Chief of the Superfund Division by Regional Delegation No. 1290.14A on November 16, 2001.

2. This Order pertains to property located at 354 McGlincey E. Lane in Campbell, Santa Clara County, California 95008 (the "Pacific Aerospace Site" or the "Site"). This Order requires Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and their successors and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements. In the event that any Respondent files for or is placed into bankruptcy, that Respondent shall notify EPA within three (3) days of such event.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the attached appendices and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on May 16, 2006 by the Chief of the Response, Planning & Assessment Branch in the Superfund Division, EPA Region 9 and all attachments thereto. The Action Memorandum is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXIX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "DTSC" shall mean the State of California Department of Toxic Substances Control and any successor departments or agencies of the State.

g. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 32 (cost of attorney time and any monies paid to secure access, including the amount of just compensation), and Paragraph 41 (emergency response).

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Order" shall mean this Unilateral Administrative Order, all appendices attached hereto and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

k. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondents.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

- n. "Respondents" shall mean Pacific Aerospace Services, Inc. and John C. Waxler.
- o. "Section" shall mean a portion of this Order identified by a Roman numeral.
- p. "Site" shall mean the Pacific Aerospace Superfund Site, located at 354 McGlincey E. Lane in Campbell, Santa Clara County, California 95008 and depicted generally on the map attached as Appendix B.
- q. "State" shall mean the State of California.
- r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under California Health and Safety Code § 25260.
- s. "Work" shall mean all activities Respondents are required to perform under this Order.

IV. FINDINGS OF FACT

8. The address for the Pacific Aerospace Site is 354 East McGlincey Lane, Campbell, Santa Clara County, California 95008. It is located in a mixed use area consisting largely of light industry but immediately adjacent to a housing development and a groundwater recharge pond.

a. The Site property is owned by John C. Waxler, of 17015 Oak Leaf Dr., Morgan Hill, California, 95037.

b. Pacific Aerospace Services, Inc. operated a plating shop at the Site. Its operations included metal-plating of a wide range of products, from precision aircraft components to lesser quality industrial products. John C. Waxler is the owner of Pacific Aerospace Services, Inc.

c. In 2004, Pacific Aerospace Services, Inc. was cited by DTSC for a number of violations, including storage of plating wastes for over ninety (90) days, unauthorized treatment of waste materials, improper disposal of buffing dust containing metals and cyanide, and other violations. Mr. Waxler failed to correct these violations for over a year.

d. In May 2005, a fire occurred at the Site, forcing Pacific Aerospace Services, Inc. to cease operations. After the fire, Mr. Waxler agreed to close the facility and remove wastes located on-Site.

e. In late May 2005, the Respondents secured the services of a cleanup contractor. The response contractor removed some of the plating materials and the damaged equipment located on-Site. It also packaged and labeled the remaining acids and other wastes, but did not remove these wastes from the Site.

f. In November 2005, the Respondents failed to pay the response contractor for work performed at the Site. At that time the response contractor quit performing the response work.

g. On April 4, 2006, DTSC requested assistance from the EPA Emergency Response Section concerning the Site.

h. On April 20, 2006, EPA On-Scene Coordinators ("OSCs") Will Duncan and Dan Suter performed an initial site assessment. During the assessment, the OSCs observed dozens of containers of waste, a clarifier with approximately 700 gallons of sludge, a steel vat containing 100 gallons of trichloroethene (TCE) and a steel vat containing cyanide salts. OSC Duncan issued a General Notice Letter to the Respondents informing them of their potential liability at the Site and requesting that they inform EPA of their willingness and ability to carry out the cleanup.

i. Hazardous substances found on-Site included: acidic and strong caustic cyanide laden plating solutions, heavy metal plating solutions, sludges and debris containing chromium, copper, cadmium, lead, nickel, silver and zinc.

j. On May 16, 2006, EPA signed the Action Memorandum which identifies the threats posed by unaddressed hazardous substances at the Site and authorizes a removal action.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting the removal action(s), EPA has determined that:

a. The Pacific Aerospace Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents Pacific Aerospace, Inc. and John C. Waxler are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").

g. The conditions present at the Site constitute an imminent and substantial endangerment to public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment and are not inconsistent with the NCP and CERCLA.

VI. ORDER

10. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered that Respondents comply with all provisions of this Order and any modifications hereto, including, but not limited to, all appendices to this Order and all documents incorporated by reference into this Order.

VII. NOTICE OF INTENT TO COMPLY

11. Each Respondent shall notify EPA in writing within one (1) day after the Effective Date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent. Such written notice shall be sent to:

Will Duncan, On Scene Coordinator
United States Environmental Protection Agency
75 Hawthorne Street
Mail Code SFD-9-2
San Francisco, California 94105
Telephone: (415) 947-4293
duncan.will@epa.gov

Thanne Cox, Assistant Regional Counsel
United States Environmental Protection Agency
75 Hawthorne Street
Mail Code ORC-3
San Francisco, California 94105
Telephone: (415) 972-3908
cox.elizabeth@epa.gov

**VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of the contractor(s) within five (5) days of the Effective Date. If, after the commencement of Work, Respondents retain additional contractor(s) or subcontractor(s), Respondents shall notify EPA of the name(s) and qualification(s) of such contractor(s) or subcontractor(s) retained to perform the Work at least three (3) days prior to commencement of such Work. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within three (3) days of EPA's disapproval.

13. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

14. Within five (5) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit in writing to EPA the designated Project Coordinator's name, address, telephone number, electronic mail address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three (3) days following EPA's disapproval. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

15. EPA has designated Will Duncan of the Emergency Response Section as its OSC. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC at:

Will Duncan, On Scene Coordinator
United States Environmental Protection Agency
75 Hawthorne Street
Mail Code SFD-9-2
San Francisco, California 94105
Telephone: (415) 947-4293
duncan.will@epa.gov

16. EPA and Respondents shall have the right, subject to Paragraph 14, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA two (2) days before changing their Project Coordinator. The initial notification may be made orally, but shall be followed by a written notice within two (2) days.

IX. WORK TO BE PERFORMED

17. Respondents shall perform, at a minimum, the following removal actions, which include, but are not limited to:

Inventory, characterize, segregate, bulk, re-containerize and remove for disposal all unsecured hazardous substances and contaminated materials left in containers, tanks and process vats, and sumps at the Site. All wastes shall be characterized using EPA approved methodologies and delivered to EPA approved receiving facilities for disposal.

18. Work Plan and Implementation.

a. Within seven (7) days after the Effective Date, Respondents shall submit to EPA for review and approval a draft Work Plan for performing the removal actions described in Paragraph 17 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order. All plans, including the Work Plan, reports and other deliverables will be reviewed and approved by EPA pursuant to Section X (EPA Approval of Plans and Other Submissions).

b. Respondents shall not commence any Work until EPA has approved the Work Plan pursuant Section X (EPA Approval of Plans and Other Submissions). Respondents shall notify EPA at least 48 hours prior to performing any Work on-Site pursuant to the EPA-approved Work Plan. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Order. Determinations of non-compliance shall be made by EPA. Approval of the Work Plan shall not

limit EPA's authority under the terms of this Order to require Respondents to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

19. Health and Safety Plan. Within seven (7) days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

20. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Upon EPA's request, Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than two (2) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that EPA deems necessary.

21. Reporting.

a. Respondents shall submit a weekly written progress report to EPA concerning actions undertaken pursuant to this Order until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during

the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit two (2) copies of all plans, reports or other submissions required by this Order or any approved Work Plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also shall require that their successors comply with the immediately proceeding sentence and Sections XI (Site Access) and XII (Access to Information).

22. Final Report. Within thirty (30) days after all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. EPA will review and approve the final report in accordance with Section XXV (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in "Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal actions (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

23. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state

and to the OSC. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action(s). Respondents shall provide the information required by Paragraph 23(a) and 23(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

24. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondents EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within three (3) days of receipt of EPA's notification of the required revisions, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

25. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 24(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other deliverable, as approved or modified in writing by EPA, and in accordance with the schedule approved by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 24(c) and the submission had a material defect, such

defect may be considered a violation of this order and may subject Respondents to civil penalties in accordance with Section XVIII (Enforcement).

26. Resubmission.

a. Upon receipt of a notice of disapproval, Respondents shall, within three (3) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Respondents may be subject to penalties in accordance with Section XVIII (Enforcement) if the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 24 and 25.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XVIII (Enforcement) for violations of this Order.

c. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

27. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA.

28. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed in violation of this Order for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XVIII.

29. Any plans, including the Work Plan, the schedule, reports, and other deliverables submitted to EPA under this Order shall, upon approval or approval with modifications by EPA, be incorporated into and become fully enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Order, the approved or modified portion shall be incorporated into and enforceable under this Order.

30. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

XI. SITE ACCESS

31. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. No Respondent shall impede or prevent any other Respondents from reasonable access to any area of the Site as needed in order to comply with the requirements of this Order.

32. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within seven (7) days after the Effective Date, or as otherwise specified in writing by the OSC. Any such access agreement shall provide reasonable access for Respondents and their representatives, including contractors, for the purpose of conducting any activity related to this Order, and for EPA and its representatives to move freely at the Site in order to conduct actions that EPA determines to be necessary. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access.

33. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

34. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

35. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies

documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Order for which Respondents assert business confidentiality claims.

36. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RECORD RETENTION

38. Until four (4) years after Respondents' receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until four (4) years after Respondents' receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all non-identical copies of records and documents (including records or documents in electronic form) and any additional information of whatever kind, nature or description relating to performance of the Work.

39. At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the

author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

XIV. COMPLIANCE WITH OTHER LAWS

40. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

41. In the event of any release of a hazardous substance from the Site or any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize any such release or threat of release, or endangerment caused or threatened. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193 and the National Response Center at (800) 424-8802 for releases of hazardous substances, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

42. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or threat of release or endangerment caused or threatened and to prevent the reoccurrence of such a release or threat of release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XVI. AUTHORITY OF ON-SCENE COORDINATOR

43. The OSC shall be responsible for overseeing Respondents' implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal actions undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by the OSC.

XVII. REIMBURSEMENT OF RESPONSE COSTS

44. Upon EPA's written demand, Respondents shall reimburse EPA for all Response Costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order or in performing any response action which Respondents fail to perform in compliance with this Order. On a periodic basis, EPA will send Respondents an accounting of all Response Costs incurred by the United States with respect to this Order that consists of a Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within thirty (30) days of receipt of each written demand requiring payment.

45. Respondents shall make all payments required by this Paragraph by a certified or cashier's check or checks or electronic funds transfer made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 09NV. Respondents shall send the check(s) to:

EPA Cincinnati Accounting Operations
Superfund Accounting
RE: Pacific Aerospace Superfund Site
P.O. BOX 371099M
Pittsburgh, PA 15251

46. At the time of payment, Respondents shall send notice that payment has been made to:

Chris Reiner
United States Environmental Protection Agency
75 Hawthorne Street
Mail Code SFD-9-2
San Francisco, California 94105
Telephone: (415) 972-3414
reiner.chris@epa.gov

47. In the event that the payments for Response Costs are not made within thirty (30) days of Respondents' receipt of a written demand requiring payment, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraphs 44, 45 and 46.

XVIII. ENFORCEMENT

48. Violation, failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R Part 19.4. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C § 9606. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, failure or refusal to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XIX. RESERVATIONS OF RIGHTS BY EPA

49. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

50. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability for costs not included within the definition of Response Costs;
- c. liability for performance of response action other than the Work;

d. criminal liability; and

e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

XX. OTHER CLAIMS

51. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

52. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

53. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

54. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. INSURANCE

55. At least three (3) days prior to commencing any Work on-Site under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of \$500,000, combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXII. ASSURANCE OF ABILITY TO COMPLETE WORK

56. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within five (5) working days after the effective date of this Order, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than one hundred thousand dollars (\$100,000). If EPA determines that such financial information is inadequate, Respondents shall, within two (2) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

XXIII. MODIFICATIONS

57. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within two (2) days, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by signature of the Superfund Division Response Planning & Assessment Branch Chief.

58. If Respondents seek permission to deviate from any approved Work Plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from the OSC pursuant to Paragraph 57.

59. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXIV. ADDITIONAL REMOVAL ACTIONS

60. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination and will either modify this Order or issue a new Order to address any additional removal actions.

XXV. NOTICE OF COMPLETION OF WORK

61. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XXVI. ADMINISTRATIVE RECORD

62. EPA shall establish an Administrative Record which contains the documents that form the basis for the issuance of this Order. No later than sixty (60) days after initiation of on-Site removal activity, it shall be made available for review by appointment at EPA Region 9's Superfund Records Center located at 75 Hawthorne Street, San Francisco, California. The Superfund Records Center may be contacted at (415) 536-2000 to schedule an appointment.

XXVII. OPPORTUNITY TO CONFER

63. Within two (2) days after issuance of this Order, Respondents may in writing request a conference with EPA, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Any such conference shall be held within two (2) days after the Respondents make the written request.

64. Respondents may appear in person or by an attorney or other representative at the conference. Respondents may also submit written comments or statements of position on any matter pertinent to this Order within five (5) days after the Effective Date of this Order if Respondents do not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Thanne Cox
Office of Regional Counsel
United States Environmental Protection Agency
75 Hawthorne Street, Mail Code ORC-3
San Francisco, CA 94105
Telephone: (415) 972-3908

XXVIII. SEVERABILITY

65. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXIX. EFFECTIVE DATE

66. This Order shall be effective three (3) days after the Order is signed by the Superfund Division Response Planning & Assessment Branch Chief unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective on the day following the day of the conference unless modified in writing by EPA.

It is so ORDERED

BY: 

Daniel A. Meer

Chief, Response, Planning and Assessment Branch
Region 9

U.S. Environmental Protection Agency

DATE: 16 May 2006

EFFECTIVE DATE: _____